

THE EFFECTIVE DATE OF THIS ORDINANCE IS JUNE 22, 2007

ORDINANCE NO. 07-20-460

**READoption OF §1-20-13 OF THE ADEQUATE PUBLIC FACILITIES ORDINANCE
(ALTERNATE SCHOOL CAPACITY OPTION FOR QUALIFYING PLANNED UNIT
DEVELOPMENTS) AS AMENDED**

RECITALS

On April 5, 2006, the Board of County Commissioners of Frederick County (BOCC) approved Ordinance No. 06-08-404 and adopted §1-20-13 of the Adequate Public Facilities Ordinance (APFO), which provides an alternate method for meeting school adequacy requirements for qualifying Planned Unit Developments (PUDs).

Ordinance No. 06-08-404, which could have had the effect of exempting qualifying Planned Unit Developments from the one hundred percent (100%) school adequacy requirement set forth in §1-20-61(C) of the APFO, included a sunset provision which provides that §1-20-13 shall expire and be of no further force and effect on July 1, 2007.

On April 17, 2007, the BOCC adopted Ordinance No. 07-10-450, which amended §1-20-13 to specify that the projected enrollment of each school serving a qualifying PUD must be less than one hundred percent (100%) of state-rated capacity during the entire APFO approval period. Ordinance No. 07-10-450, did not change the expiration or "sunset" date for §1-20-13.

The BOCC now desires to readopt §1-20-13, with certain revisions, and provide that it shall remain in effect until July 1, 2008.

The Board of County Commissioners held a duly advertised public hearing on June 12, 2007, during which the public had an opportunity to comment on this proposed Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND, that the Frederick County Code be amended as follows :

Section 1-20-13 is hereby reenacted and readopted in its entirety as follows:

§ 1-20-13. ALTERNATE SCHOOL CAPACITY OPTION FOR QUALIFYING PUDS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, ANY PUD WHICH: (1) HAS A VALID PHASE I APPROVAL FOR MORE THAN 3,000 UNITS; (2) HAD A VALID PHASE II PUD PLAN APPROVAL AS OF DECEMBER 1, 1991; AND (3) IS NOT COMPLETELY BUILT OUT AS OF THE DATE OF ADOPTION OF THIS SECTION (A "QUALIFYING PUD"), MAY MEET THE REQUIREMENTS FOR ADEQUATE SCHOOL CAPACITY UNDER THIS SECTION, IN LIEU OF MEETING THE SCHOOL ADEQUACY REQUIREMENTS OF § 1-20-61.

(A) FOR PURPOSES OF THIS SECTION ONLY, **ADEQUATE SCHOOL CAPACITY** SHALL MEAN THE FUNDING OR PROVISION OF SCHOOL CAPACITY IN AMOUNTS TO BE DETERMINED BY THE BOARD OF EDUCATION, AND APPROVED BY THE PLANNING COMMISSION, FOR EACH SCHOOL SERVING THE QUALIFYING PUD AFTER CONSIDERATION OF CURRENT ENROLLMENTS AND CAPACITIES OF EACH SCHOOL SERVING THE QUALIFYING PUD, STUDENTS GENERATED BY THE QUALIFYING PUD, POTENTIAL ENROLLMENT GROWTH FROM OTHER RESIDENTIAL DEVELOPMENT, AND OTHER FACTORS AS DETERMINED BY THE BOARD OF EDUCATION THAT MAY IMPACT SCHOOL ENROLLMENT, PROVIDED THAT THE PROJECTED ENROLLMENT OF EACH SCHOOL SERVING A QUALIFYING PUD MUST BE LESS THAN ONE HUNDRED PERCENT (100%) OF STATE-RATED CAPACITY DURING THE ENTIRE APFO APPROVAL PERIOD.

(B) THE OWNER OR DEVELOPER OF A QUALIFYING PUD MAY, AFTER CONSULTATION WITH THE BOARD OF EDUCATION, PROPOSE AN OPTION TO PROVIDE ADEQUATE SCHOOL CAPACITY (THE "DEVELOPER OPTION PROPOSAL") FOR APPROVAL BY THE PLANNING COMMISSION. THE DEVELOPER OPTION PROPOSAL SHALL BE ACCOMPANIED BY A WRITTEN AGREEMENT BETWEEN THE OWNER OR DEVELOPER OF THE QUALIFYING PUD AND THE BOARD OF EDUCATION. THE AGREEMENT SHALL BE APPROVED BY THE BOARD OF COUNTY COMMISSIONERS PRIOR TO SUBMISSION TO THE PLANNING COMMISSION. THE WRITTEN AGREEMENT MUST INCLUDE: (1) THE NUMBER AND SCOPE OF SCHOOL CONSTRUCTION PROJECTS APPROVED BY THE BOARD OF EDUCATION; (2) THE SCHEDULE AND PROCESS FOR CONSTRUCTION; AND (3) OTHER TERMS AND CONDITIONS ASSOCIATED WITH DEVELOPER- FUNDED SCHOOL CONSTRUCTION PROJECTS.

(C) THE PLANNING COMMISSION MAY APPROVE A DEVELOPER OPTION PROPOSAL THAT MEETS THE REQUIREMENTS OF THIS SECTION FOLLOWING RECEIPT OF COMMENTS, DATA, AND INFORMATION FROM THE BOARD OF EDUCATION, COUNTY STAFF AND THE PUBLIC.

(D) THE DEVELOPER OPTION PROPOSAL APPROVED UNDER THIS SECTION SHALL BE MEMORIALIZED IN A DEVELOPER OPTION AGREEMENT BETWEEN THE

OWNER OR DEVELOPER OF THE QUALIFYING PUD AND THE PLANNING COMMISSION THAT SETS FORTH THE PUBLIC SCHOOL IMPROVEMENTS TO BE PROVIDED, THE TIMING OF FUNDING OR CONSTRUCTION OF SUCH IMPROVEMENTS, AND A PHASING PLAN LINKING THE RATE AND DENSITY OF CONSTRUCTION WITHIN THE QUALIFYING PUD TO THE AVAILABILITY OF THE SCHOOL FACILITIES. THIS DEVELOPER OPTION AGREEMENT SHALL BE INCORPORATED INTO THE ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING BETWEEN THE DEVELOPER AND THE PLANNING COMMISSION COVERING ALL PUBLIC FACILITIES UNDER THIS CHAPTER. ANY SUBSEQUENT MODIFICATIONS TO THE LETTER OF UNDERSTANDING THAT MAY IMPACT PUBLIC SCHOOLS WILL REQUIRE REVIEW AND APPROVAL BY THE BOARD OF EDUCATION.

(E) THE PHASING PLAN FOR CONSTRUCTION OF A QUALIFYING PUD AND THE APFO APPROVAL MAY BE GRANTED FOR A TIME PERIOD UP TO, BUT NOT EXCEEDING, 15 YEARS, AND AS OTHERWISE PROVIDED UNDER § 1-20-8.

AND BE IT FURTHER ENACTED AND ORDAINED that §1-20-13 as reenacted and readopted herein shall remain in effect only until June 30, 2008, and shall expire and be of no further force and effect on July 1, 2008, provided that any APFO school adequacy approvals granted under the provisions of §1-20-13 while it is in effect shall remain in full force and effect during the APFO approval period as approved by the Planning Commission.

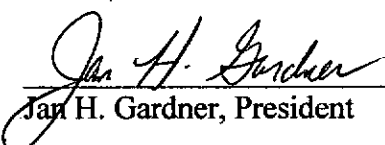
The undersigned hereby certifies that this Ordinance was approved and adopted on the 12th day of June, 2007.

ATTEST:

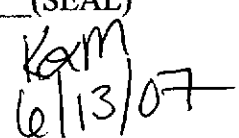
BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND



Douglas Browning
County Manager

BY:  (SEAL)

Jan H. Gardner, President


KAM
6/13/07